A Clear Map After the Deluge: Précis of Gendered Intelligence's Trans Inclusion Guidance

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A Clear Sky After the Deluge

Few areas of law have changed course so fast, or left so many institutions guessing, as trans inclusion law in Britain. Into that uncertainty steps a substantial guidance document from Gendered Intelligence (GI), the UK charity (registered 1182558) whose motto, *Everyone can be intelligent about gender*, sets the tone. Its document, *Maximising Trans and Non-Binary Inclusion: Responding to the Effects of the Supreme Court Interpretation of 'Sex'* (Version 4.1, September 2026), runs to eighteen pages and was reviewed by solicitors Russell-Cooke LLP after the August 2026 Equality and Human Rights Commission (EHRC) Code of Practice was formally issued. This précis covers all its main points; page references are to the document.

One caveat belongs up front, because its publishers insist on it: GI is not a law firm, the document does not constitute legal advice, and organisations navigating specific situations should seek properly qualified advice (Gendered Intelligence, 2026, p. 2).

What makes the document unusual, and worth précising, is its central argument. Against the current of public reporting, it maintains that neither the Supreme Court Judgment of April 2025 nor the Code mandates exclusion of trans people; that proportionality, context and fact-sensitive assessment remain central to the legal analysis; and that a transparent, trans-inclusive, compliant line is not merely ethical but lawful, practical and available.

The document is also honest about its moment. Key court decisions have been inconsistent, several are under appeal, and the authors concede there remains a lack of clarity about practical, lawful approaches to trans inclusion (Gendered Intelligence, 2026, p. 3).

Terminology matters throughout, and the document fixes it precisely. *Single sex* denotes spaces or services designated for women or men using the Supreme Court's definition of 'sex'; *single gender* denotes spaces or services designated for women or men that are trans inclusive (Gendered Intelligence, 2026, p. 3).

What the UK Courts Have Done, and What They

Have Left Open

The story begins, as GI tells it, with a 2021 judicial review about whether trans women with a Gender Recognition Certificate counted as ‘women’ under the Equality Act 2010 in the context of an all-women shortlist, a case that climbed to the Supreme Court as For Women Scotland v The Scottish Ministers (Gendered Intelligence, 2026, pp. 2–4). On 16th April 2025 the Court ruled that for Equality Act purposes the terms ‘woman’ and ‘sex’ refer to a biological woman and biological sex, in the panel’s oral words: "*The unanimous decision of this court is that the terms woman and sex in the Equality Act 2010 refer to a biological woman and biological sex. But we counsel against reading this judgment as a triumph of one or more groups in our society at the expense of another, it is not*" (Gendered Intelligence, 2026, p. 4). The Court defined biological sex as the sex of a person at birth (paragraph 7), which GI takes to mean the sex marker on a person’s original birth certificate. Critically, the Court refused the wider job: it is not, it said, "*the role of the Court to… define the meaning of the word ‘woman’ other than when used in the provisions of the EA 2010*", and its role is one that "*does not involve making policy*" (paragraph 2).

Two legal zones should not be confused, and GI makes the distinction a running theme. The law covering service users, public functions and associations is not the law that applies in the workplace; the Equality Act ‘operates’ differently in each, and the new Code expressly does not cover employment practices, nor the Workplace (Health, Safety and Welfare) Regulations 1992 (Gendered Intelligence, 2026, pp. 4–5). An EHRC Code for Employment is anticipated in due course.

The tribunals have been busy since, with instructively uneven results. Employment Tribunals (first-instance, hence not binding) decided the Leonardo case (published 3 December 2025), Peggie v Fife (8 December 2025) and the ‘Darlington Nurses’ case (14 January 2026): all heard around the same time, all reaching significantly different conclusions on similar points, all hinging on their facts, and all indicating that trans inclusion in line with a trans person’s lived sex is possible (Gendered Intelligence, 2026, p. 5). Appeals are intended in at least two of them, and if matters reach the Employment Appeal Tribunal, anything binding there would settle the question for tribunals thereafter.

The load-bearing case is binding: R (Good Law Project Ltd) v EHRC, decided by the High Court in February 2026, which GI reproduces with generous quotation (pp. 5–8). On 25th April 2025 the EHRC published an interim update stating broadly that trans women should be barred from women’s workplace facilities and trans men from men’s; it was non-statutory and carried no formal legal status, yet organisations acted on it as though it had authority, and three anonymous claimants gave evidence that facilities at their workplaces were changed under it and remained unchanged.

The High Court was asked whether statements in that update accurately reflected the law under the 1992 Workplace Regulations and the Equality Act, and found them lawful, chiefly because the update did not purport to be a complete statement of the possibilities and carried a caveat. But the judgement also held that trans people **must** be provided for, potentially via trans-inclusive or gender-neutral provision, and the judge gave strong indications about practical application.

Good Law Project’s own account, quoted in full by GI, is the clearest available short summary (Gendered Intelligence, 2026, p. 6). For services, the High Court is "*very clear that it will likely be lawful for service providers to allow trans people to use toilet and changing room facilities which align with their lived gender. There is no requirement of a ‘bathroom ban’*". Where provision is equal and separate for both sexes, allowing trans women into women’s facilities is unlikely to be direct discrimination against men; providers may lawfully offer women’s facilities that both cisgender and trans women may use while cisgender men remain excluded; and the Court says trans-inclusive facilities may be labelled simply ‘women’s’ or ‘men’s’. One balancing duty is flagged: providers must weigh the needs of all users, including those whose religion or belief makes them unwilling to use trans-inclusive facilities, and failing to provide for them may be indirect discrimination requiring

proportionate justification. Crucially, it is "*likely to be unlawful to require trans people to use services corresponding to their sex as recorded at birth*".

For workplaces, the position is **stricter** on single-sex labelling and freer in alternatives. Single-sex toilet, washing and changing provision must be provided on the basis of 'biological sex'; employers may **not** allow trans women into women's toilets while calling those toilets single-sex. But this "*does not prohibit providing additional provision which is not single-sex*", and sufficient, appropriate provision for trans employees is a requirement, possibly achieved through mixed-sex facilities alongside single-sex ones. The High Court's suggestion is pointed: **employers should consider universal provision in individual, lockable rooms, which complies with the regulations** and sidesteps potential discrimination claims altogether (Gendered Intelligence, 2026, p. 7).

GI adds a footnote of its own for both zones: **single-gender facilities can be lawful, but if there is no appropriate additional provision for cisgender people who do not wish to use them, the provider may face indirect discrimination or harassment claims** (Gendered Intelligence, 2026, p. 6).

Two further notes round out the legal landscape. The High Court decision binds lower courts in England and Wales but its observations on hypothetical scenarios are persuasive rather than binding, and in Scotland it is influential only; the claimants have applied to appeal, so the target may move again (Gendered Intelligence, 2026, p. 8). And in February 2026 the United Nations Human Rights Council issued a statement calling on the UK to uphold protections for all women including trans women, warning that legal recognition unaccompanied by functional access is hollow, and that frameworks permitting routine exclusion from ordinary public services or discretionary verification of sex would raise serious concerns under international human rights law (Gendered Intelligence, 2026, p. 8).

GI also marks an **unresolved** seam between the Code and the judgement: the High Court's observation that single-gender facilities can most likely be provided without cis people of the opposite gender having a claim appears at odds with Code paragraph 13.131, which states that a mixed-sex service must be open to all; the Code is statutory, but the judgement is persuasive authority likely to be given weight, an example, GI notes, of the uncertainty that persists (p. 8).

How, then, does an organisation that wants to remain trans-inclusive build its position?

The Equality Act's starting point is services without discrimination on protected characteristics; separate or single-sex provision is a statutory exception to that principle, and, in GI's phrase, the Act is *'permissive, not prescriptive'* here.

There is no automatic individual or collective right to single-sex provision and no single-sex default (Gendered Intelligence, 2026, p. 9). The Schedule 3, Part 7 provisions (clauses 26 and 27) allow separate services where a joint service would be less effective, where demand differs by sex, or where only one sex has need of the service; and single-sex services where users attend simultaneously and a person of one sex might reasonably object to the presence of a person of the opposite sex, or where the service involves physical contact and the recipient might reasonably object if the provider were not of the same sex.

Clause 28 (gender reassignment) permits, but does not mandate, exclusion of trans people. In every circumstance the provision, and any trans exclusion, must be a *'proportionate means of achieving a legitimate aim'* (Gendered Intelligence, 2026, pp. 9–10).

Proportionality GI explains as a balancing exercise, and the explanation is the practical heart of the document. **A decision-maker need not prove no other option existed; the decision must be reasonably necessary to a legitimate aim, and if the same aim could be met less discriminatorily, it will not be held reasonably necessary.** Scale and nature of impact count: how

many people affected, how seriously, and for how long. Knowing one's service-user base and keeping evidence-based reasoning is thus the **best** preparation for any future challenge (Gendered Intelligence, 2026, p. 10).

Here the single-gender device does its work. A trans-inclusive service for women cannot lawfully call itself 'single sex' under the new interpretation, but i**t can describe itself as single gender, 'for women', and state plainly that it is trans inclusive.** The Code (13.130) says providers cannot rely on the single-sex exceptions as the legal basis for single-gender provision, so the provider must justify the exclusion of cisgender men by another route. One candidate route is positive action under section 158 of the Equality Act, which permits reasonable, proportionate steps to address disadvantage, particular needs or under-representation linked to a protected characteristic; it is untested in the courts for this purpose, but Bates Wells' summary is quoted with cautious approval: **a trans-inclusive women's toilet could potentially justify excluding cis men as positive action benefiting cis and trans women alike** (Gendered Intelligence, 2026, pp. 11–12).

Organisations that previously relied on the single-sex exception under the old, trans-inclusive understanding of 'sex' are told to revisit their policy and external communications, update their reasoning, let service users make informed decisions, and formally record the decision with reasons internally (Gendered Intelligence, 2026, p. 11).

Proportionality, GI observes, looks different now: if trans people were previously served and would now be significantly harmed by exclusion, that bears directly on whether exclusion is proportionate; the EHRC's own Equality Impact Assessment for the Code **concedes** likely significant negative impact on trans people, **and** impact on cisgender women questioned or excluded on the assumption they are trans.

On risk generally, the document is refreshingly even-handed. **There is no completely risk-free approach**: challenges can be brought against exclusion and against inclusion alike, and the key question is not how to eliminate risk but whether an approach is evidence-based, proportionate and tailored to the service's purpose. A well-reasoned, carefully documented inclusive approach can be just as legally defensible as an exclusive one (Gendered Intelligence, 2026, p. 12). Public bodies carry an additional duty: the Public Sector Equality Duty (s.149) requires them to **consider the impact of decisions on different groups before deciding, without prescribing outcomes** (p. 12).

Workplace toilets have their own regime under the 1992 Regulations (schools under the 1999 School Premises Regulations). Employers must provide safe, suitable access for all staff, which can be separate men's and women's provision, individual lockable rooms anyone can use, or a combination. Trans employees should **not** be forced into facilities that do not match the gender in which they live, nor policed when using facilities; differing views among staff do not dissolve that duty.

There is no legal requirement for single-sex-only provision, and GI's practical observation is quietly subversive: no organisation can be certain any shared space is 'trans free', many trans people have used facilities in line with their lived sex invisibly and without concern for years, and the **only** absolutely single-sex space is one occupied by a single person.** No document can prove anyone is cisgender**; attempts would be pointless and intrusive. Employers may trust employees and need not police toilets, as Bates Wells puts it, though they are expected to act on complaints (Gendered Intelligence, 2026, p. 13).

What choices face a trans person in the meantime? **A policy violation is not a crime: a trans person continuing to use a space aligned with their lived sex or gender commits no offence, no private citizen may lawfully detain another who has committed none, and there is no obligation to answer questioning about one's sex or gender.** The risks run the other way: accusations of defying a reasonable employer instruction, or of harassment under the Equality Act's definition (violating a

person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment). **The Code itself (13.165) recognises that harassment or discrimination may arise where a trans person is questioned in ways that are public, humiliating, combative or insensitive** (Gendered Intelligence, 2026, p. 14).

GI's constructive answer to both problems is design: universal facilities fit for all. Communal men's and women's spaces are, in its view, the least accommodating arrangement for trans and non-binary people; the ideal is a predominance of lawful, universal, all-gender toilets and changing facilities with fully private individual enclosed cubicles, at least some with integral washing facilities. The design serves parents with older children of a different gender, disabled people with carers of a different gender, people with colostomies or menstrual products requiring privacy, and those with faith-based washing requirements. One caution is noted: redesignating accessible toilets as gender neutral can harm disabled users who rely on them, an impact the Code's own Equality Impact Assessment acknowledges (Gendered Intelligence, 2026, p. 14).

The Gender Recognition Act 2004 thread is handled with care. Its section 9(1) **remains the law in general terms: where a full gender recognition certificate is issued, the person's gender becomes, in the statute's words, for all purposes the acquired gender.** The Supreme Court decided that section 9(3), which makes section 9(1) subject to other enactments, applies to the Equality Act, so a Gender Recognition Certificate no longer changes sex for Equality Act purposes. But the certificate still carries legal force for marriage and tax; it is not required for death certificates, though it makes respect more certain; for many it remains a matter of affirmation and legal recognition of one's lived sex; and the process issues a new birth certificate reflecting the acquired sex.

Nor should the Act's limits be forgotten: English law recognises only male and female as legal sexes, so there is no provision for non-binary people to have their lived gender legally recognised, and the Gender Recognition Act's evidence, diagnosis and declaration requirements are ones not everyone can easily meet. **For employers, section 22 continues to bite: it is a criminal offence to disclose that a person has a Gender Recognition Certificate when learned in an official capacity, such as HR, unless consent or a specific exception applies.** GI closes this section with the sharpest observation in the document: the Equality Act always contained narrow exceptions permitting trans exclusion where necessary and proportionate; the new position permits exclusion potentially justified solely on the basis that someone is trans (Gendered Intelligence, 2026, pp. 15–16).

Finally, privacy. The Code recognises that information about a person's sex engages Article 8 of the European Convention on Human Rights (respect for private and family life), so requests for such information **must be a proportionate means of a legitimate aim**; and organisations are asked to maintain the dignity and confidentiality of trans people with or without a certificate. The trans man who has always used the men's toilets, sent without explanation to a gender-neutral facility and questioned there, is the document's worked example of what insensitivity looks like. **Sensitivity, in its closing word on the matter, is crucial** (Gendered Intelligence, 2026, p. 16).

Conclusion: Front-Footed Inclusion

Cumulatively, the document amounts to a counsel of confident moderation. **Nothing in the current law mandates exclusion: the Code repeatedly returns to proportionality and context, the High Court has said a bathroom ban is not required, and unlawful, the guidance argues, is requiring trans people to use facilities matching their sex at birth**. Organisations wanting to remain inclusive are offered a usable toolkit:

- define the purpose of the service and who needs it;
- weigh proportionality with evidence about scale and nature of impact;

- if single gender is the aim, rely on something other than the single-sex exceptions, positive action being the candidate mechanism;
- document the decision and its reasons formally;
- review external communications so that service users can choose informed; and
- consider universal, individual, lockable provision, the design that is simultaneously compliant, dignity-preserving and claim-avoiding.

Public bodies should add the Public Sector Equality Duty to the ledger before deciding. Above all, GI asks organisations to be visible: institutions, it notes, have a power the trans community does not (Gendered Intelligence, 2026, pp. 3, 9–14).

The document's further reading list is generously furnished and worth following: the Bates Wells and Lewis Silkin legal summaries, Good Law Project's FAQ, Melanie Field's two critiques of the EHRC's conduct, Crash Wigley's legal critique of For Women Scotland, and Trans Actual's know-your-rights material. GI signs off with its own disclaimer, repeated in fairness: not solicitors, not legal advice, not a substitute for it.

Coda

The deepest service this document performs is not legal but tonal. It insists, against a noisy autumn, that the law still contains room for welcome; that proportionality is not a hole in the wall but a door, if an organisation chooses to walk through it; and that inclusion, competently reasoned and honestly documented, can stand its ground in court. That is precisely the reassurance trans people need from the institutions around them.

References

Equality Act 2010, ss. 149, 158; Sch 3, Pt 7, cls 26–28.

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R (For Women Scotland Ltd) v The Scottish Ministers (2025) UK Supreme Court, 16 April.

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Workplace (Health, Safety and Welfare) Regulations 1992; Education (School Premises) Regulations 1999.